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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

UNITED STATES OF AMERICA,)	No. CR 09-00693 CW
Plaintiff,)	STIPULATION AND PROPOSED
v.)	ORDER TO CONTINUE HEARING
NATHAN WILLIE GARDNER, JR.,)	
Defendant.)	

Plaintiff, by and through its attorney of record, and defendant, by and through his attorney of record, hereby stipulate and ask the Court to find as follows:

1. A status conference in this matter is currently scheduled for 2 p.m. on Wednesday, September 23, 2009.

2. The parties request that this hearing be continued until 2 p.m. on Wednesday, October 7, 2009, because defendant's counsel requires additional time to review the discovery produced in this matter and determine whether or not defendant will file motions or plead guilty in this case, or take other courses of action.

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1 3. The parties believe that failure to grant the above-requested continuance would
2 deny defendant continuity of counsel, would deny defendant's counsel and defendant the
3 reasonable time necessary for effective preparation taking into account the exercise of due
4 diligence, and that the ends of justice served by continuing the case as requested outweigh the
5 interest of the public and defendant in a trial within the date prescribed by the Speedy Trial Act.

6 4. Thus, the parties respectfully request that the Court find that the time period from
7 September 23, 2009, to October 7, 2009, is excludable pursuant to 18 U.S.C. §§ 3161(h)(7)(A),
8 (B)(iv) because it results from a continuance granted by the Court at the defendant's request and
9 on the basis of the Court's finding that the ends of justice served by taking such action outweigh
10 the best interest of the public and the defendant in a speedy trial and because failure to grant the
11 continuance would unreasonably deny defendant continuity of counsel and would unreasonably
12 deny defense counsel the time necessary for effective preparation for trial, taking into account
13 due diligence.

14 IT IS SO STIPULATED.

15 JOSEPH P. RUSSONIELLO
16 United States Attorney

17 Dated: September 22, 2009

 /s/
18 GARTH HIRE
 Assistant United States Attorney
19 Attorney for United States of America

20 Dated: September 22, 2009

 /s/
21 ALAN DRESSLER
22 Attorney for Nathan Gardner, Jr.

[PROPOSED] ORDER

FOR GOOD CAUSE SHOWN, THE COURT ADOPTS THE FINDINGS OF FACT AND CONCLUSIONS OF LAW STIPULATED TO BY THE PARTIES. THEREFORE, IT IS SO FOUND AND ORDERED THAT:

1. The currently scheduled September 23, 2009, status conference hearing is vacated. A status conference hearing is now scheduled for 2:00 p.m. on October 7, 2009.

2. The time period from September 23, 2009, to October 7, 2009, is deemed excludable pursuant to 18 U.S.C. §§ 3161(h)(7)(A), (B)(iv) because it results from a continuance granted by the Court at the defendant's request and on the basis of the Court's finding that the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial and because failure to grant the continuance would unreasonably deny defense counsel the time necessary for effective preparation for trial, taking into account due diligence. The Court finds that nothing in this stipulation and order shall preclude a finding that other provisions of the Speedy Trial Act dictate that additional time periods are excludable from the period within which trial must commence.

DATED: September 22, 2009



HONORABLE CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE